

Appl. No. 10/736,282
Docket No. AA556C
Amdt. dated June 9, 2008
Reply to Office Action mailed on March 17, 2008
Customer No. 27752

REMARKS

Claim Status

Claim 1 has been amended to include the feature of an extensibility controlling means selected from the group consisting of an elastic material and an inelastic material. Support for this amendment is found at page 12, lines 10-11 of the specification.

Claims 1-18 are pending in the present application. No additional claims fee is believed to be due.

Interview Summary

Applicants would like to thank Examiner Hand for allowing Applicants' attorneys to conduct a personal interview on May 14, 2008 in the present application. As summarized by the Examiner in the Summary that was issued at the conclusion of the interview, Applicants submit that Malowaniec does not teach an extensibility controlling means as recited in claim 1 of the present application. In view of the interview and the discussions held therein, Applicants respond below to the rejections raised by the Office.

Rejection Under 35 USC §103(a) Over Nakahata in view of Malowaniec

Claims 1-18 have been rejected under 35 USC §103(a) as being unpatentable over U.S. Pat. No. 5,873,868 to Nakahata, et al. (hereinafter "Nakahata") in view of U.S. Pat. No. 6,049,915 to Malowaniec (hereinafter Malowaniec). Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Office must show that all of the claim elements are taught or suggested in the prior art. *See, e.g., CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 68 U.S.P.Q.2D 1940 (Fed. Cir. 2003).

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In the Advisory Action dated May 1, 2008, The Office states that “[i]t is clear from the rejection of claim 1 in the last and previous Office actions that it is the Malowaniec reference that teaches an extensibility controlling means as disclosed and claimed, thus remedying that particular deficiency of Nakahata” (The Advisory Action, page 2). While Applicants agree that Nakahata does not disclose an extensibility controlling means as recited in claim 1 of the present application, Applicants must respectfully disagree with the Office’s reading of Malowaniec.

Claim 1 recites, *inter alia*, wherein the extensibility controlling means is selected from the group consisting of an elastic material and an inelastic material and wherein the extensibility controlling means inhibits the chassis layer from extending beyond extensibility causing breakage of the chassis layer.

In contrast, Malowaniec discloses

Based on the above, an object of the present invention is to provide a laminate that is tear-proof in spite of the incisions, and in which the incisions in the vicinity of elastic element do not continue throughout all three layers, thus ensuring impermeability to liquid in this region.

According to the present invention, this object is achieved in a generic article of clothing in that the incisions in the first inelastic layer are laterally displaced against the incisions in the second inelastic layer.

(Malowaniec, col. 1, lines 57-65) (emphasis added). As best understood by Applicants, Malowaniec clearly discloses laterally displacing the incisions in the first and second layers to prevent tearing of the laminate, as opposed to providing a discrete structural element of material for controlling extensibility as recited in claim 1 of the present application. (*Id.*).

In light of the above remarks, it is Applicants’ position that the combination of Nakahata and Malowaniec does not teach or suggest each and every element of claim 1 or any claim depending therefrom. Accordingly, Applicants respectfully request that the rejection of claims 1-18 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

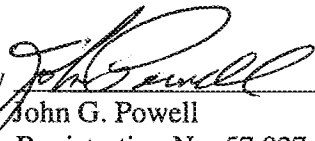
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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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